

1 RADOSLOVICH LAW CORPORATION
2 Frank M. Radoslovich SBN 161457
3 Shawn M. Krogh SBN 227116
4 601 University Avenue, Suite 250
5 Sacramento, CA 95825
6 Telephone: (916) 565-8161
Facsimile: (916) 565-8170

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8 Attorneys for Defendant
9 DAVID FLAGG dba
FLAGG BUILDING IMPROVEMENTS

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES FOR THE USE OF) Case No. 2:05-CV-0653-MCE-DAD
11 SAN JOAQUIN STEEL CO., INC.,)
12 Plaintiff,) **STIPULATION TO SUBMIT CROSS-**
vs.) **COMPLAINT TO ARBITRATION**

14 FBI/KOO, A Joint Venture; TRAVELERS)
15 CASUALTY AND SURETY COMPANY OF)
16 AMERICA; FLAGG BUILDING)
17 IMPROVEMENTS, INC.; K.O.O.)
CONSTRUCTION, INC.; and DOES 1)
through 25,)
Defendants)

DAVID FLAGG dba FLAGG BUILDING)
IMPROVEMENTS, INC.,)

Cross-Complainant,)
vs.)
K.O.O. CONSTRUCTION, INC.,)
Cross-Defendant)

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RECITALS

1. Cross-Complainant DAVID K. FLAGG dba FLAGG BUILDING IMPROVEMENTS (“FLAGG”) and Cross-Defendant K.O.O. CONSTRUCTION, INC. (“K.O.O.”) are business partners in the venture known as FBI/K.O.O., a joint venture.

2. Plaintiff San Joaquin Steel filed a lawsuit against FBI/K.O.O., a joint venture; FLAGG; and K.O.O.

3. FLAGG filed and served a cross-complaint seeking indemnity against K.O.O. CONSTRUCTION, INC for the San Joaquin Steel lawsuit.

4. Article XII, section 4 of the Joint Venture Agreement executed by FLAGG and K.O.O. provides that the parties shall submit their disputes to binding arbitration

5. K.O.O. filed a Motion to Dismiss the cross-complaint for failing to comply with Article XII, section 4 of the Joint Venture Agreement. This Motion is set to be heard on October 17, 2005.

AGREEMENT

IT IS HEREBY AGREED to and STIPULATED by and between the attorneys for FLAGG and K.O.O. that FLAGG's cross-complaint shall be submitted to William Porter for binding arbitration. In the event Mr. Porter (1) resigns as the arbitrator, (2) develops a conflict of interest that prevents him from continuing to participate as the arbitrator, (3) the parties agree, in writing, to find a new arbitrator, or (4) is removed for any other reason recognized by law, another arbitrator shall be selected pursuant to the Joint Venture Agreement.

IT IS FURTHER AGREED that FLAGG's cross-complaint may be submitted for binding arbitration after the final resolution of the San Joaquin Steel matter currently pending against FBI/K.O.O., a joint venture; FLAGG; and K.O.O.

IT IS FURTHER AGREED that the prosecution and defense of FLAGG's cross-complaint shall be stayed pending final resolution of the action in arbitration.

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1 IT IS FURTHER AGREED that K.O.O.'s Motion to Dismiss shall be taken off calendar
2 pursuant to this stipulation.

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4 Dated: September 30, 2005

RADOSLOVICH LAW CORPORATION

5 _____/s/
6 Shawn M. Krogh
7 Attorneys for DAVID K. FLAGG dba
8 FLAGG BUILDING IMPROVEMENTS

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10 Dated: September 30, 2005

DOWNEY BRAND, LLP

11 _____/s/
12 Treven I. Tilbury
13 Attorneys for K.O.O. CONSTRUCTION,
14 INC.
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~~PROPOSED ORDER~~

WHEREFORE, based upon the stipulation of Cross-Complainant DAVID K. FLAGG dba FLAGG BUILDING IMPROVEMENTS (“FLAGG”) and Cross-Defendant K.O.O. CONSTRUCTION, INC., IT IS HEREBY ORDERED:

1. FLAGG's cross-complaint shall be submitted to William Porter for binding arbitration. In the event Mr. Porter (1) resigns as the arbitrator, (2) develops a conflict of interest that prevents him from continuing to participate as the arbitrator, (3) the parties agree, in writing, to find a new arbitrator, or (4) is removed for any other reason recognized by law, another arbitrator shall be selected pursuant to the Joint Venture Agreement.

2. FLAGG's cross-complaint may be submitted for binding arbitration after the final resolution of the San Joaquin Steel matter currently pending against FBI/K.O.O., a joint venture; FLAGG; and K.O.O.

3. The prosecution and defense of FLAGG's cross-complaint shall be stayed pending final resolution of the action in binding arbitration

4. K.O.O.'s Motion to Dismiss set for hearing on October 17, 2005 is taken off calendar pursuant to the stipulation of the parties.

IT IS FURTHER ORDERED that the parties shall submit a Joint Status Report re the status of the arbitration not later than March 1, 2006.

Dated: October 12, 2005

Morrison C. England, Jr.
MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE